

PROB 12C
(04/08)

August 18, 2008

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF CALIFORNIA

FILED

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Petition for Warrant or Summons for Offender Under Supervision

CLERK, U.S. DISTRICT COURT
DISTRICT OF CALIFORNIA

CR
DEPUTY

Name of Offender: Gabriel MARTINEZ (English)

Dkt No.: 07-CR-3232-001-LAB

Reg. No.: 01718-298

Name of Sentencing Judicial Officer: The Honorable Larry A. Burns, U.S. District Judge

Date of Sentence: March 3, 2008

Original Offense: 21 U.S.C. §§ 952 and 960, Importation of Marijuana, a Class C felony.

Sentence: 6 months custody; 3 years supervised release. (*Special Conditions: See Attached Judgment and Commitment Order.*)

Type of Supervision: Supervised Release

Date Supervision Commenced: May 1, 2008

Asst. U.S. Atty.: Caleb Mason

Defense Counsel: Inge Brauer (Appointed)
(619) 238-1031

Prior Violation History: None.

PETITIONING THE COURT

TO ISSUE A NO-BAIL BENCH WARRANT

The probation officer believes that the offender has violated the following condition(s) of supervision:

CONDITION(S)

ALLEGATION(S) OF NONCOMPLIANCE

(Mandatory Condition)

Not commit another federal, state, or local crime. (nvl) 1.

On August 11, 2008, Mr. Martinez imported a controlled substance in violation of 21 U.S.C. §§ 952 and 960, as evidenced by the complaint filed in the U.S. District Court, Southern District of California, Dkt No. 08-MJ-8715-001-PCL.

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Grounds for Revocation: I have received and reviewed the complaint filed in the U.S. District Court, Southern District of California, Dkt No.: 08-MJ-8715-001-PCL, which confirms the following: On the above date, Mr. Martinez was the driver of a 1990 Chevrolet pickup, accompanied by a passenger identified as Remigio Loera-Santos, which attempted to enter the United States at the Calexico West Port of Entry. However, during primary checks, it was determined that Mr. Martinez had been arrested for prior smuggling attempts. Therefore, Customs and Border Protection Officer (CBPO) Soto referred Mr. Martinez to secondary inspection. While at secondary inspection, CBPO Galaviz instructed Mr. Martinez to open the hood of the vehicle. As the hood opened, CBPO Galaviz discovered twenty-three packages, with a total weight of 121.57 pounds of marijuana hidden around the engine. Mr. Martinez was placed under arrest and subsequently booked at the Imperial County Jail where he has remained.

On August 12, 2008, a one-count complaint was filed in the U.S. District Court, Southern District of California, charging Mr. Martinez with violation of 21 U.S.C. §§ 952 and 960, Importation of a Controlled Substance, Dkt. No.: 08-MJ-8715-001-PCL. The matter is set for a Preliminary Hearing before the Honorable Judge Lewis on August 26, 2008, at 1:30 p.m., in El Centro, California.

VIOLATION SENTENCING SUMMARY

SUPERVISION ADJUSTMENT

Mr. Martinez was released from custody on May 1, 2008, after serving six months custody, upon which he commenced his term of supervised release. However, upon his release from custody, Mr. Martinez was ordered to serve a two month punitive placement at a Residential Reentry Center (RRC), as a condition of his supervised release. He was subsequently released successfully from the RRC on July 28, 2008. Mr. Martinez was instructed to report to the U.S. Probation Office in El Centro, California, for further supervision instructions. At that time, the conditions of supervision were reviewed with Mr. Martinez. He attached his signature to a copy of the Judgement and Commitment Order indicating the conditions were reviewed with him and that he understood the conditions. Mr. Martinez was granted permission by the Court to reside in Mexicali, Mexico, with his family and he was allowed to proceed to his home in Mexicali. He acknowledged the importance of complying with the conditions of supervised release and asserted he intended to follow the orders of the Court. Mr. Martinez indicated that he wanted to reunite with his family, since his actions appeared to have negatively affected them.

Unfortunately, despite his claims to the contrary, Mr. Martinez reverted to illegal activity. On August 11, 2008, information was received indicating he had been arrested for importation of marijuana, as reported as a violation herein. Therefore, his overall adjustment to supervision was poor.

OFFENDER PERSONAL HISTORY/CHARACTERISTICS

Mr. Martinez is a 35 year-old Hispanic male, who was residing in Mexicali, Mexico with his family. He reported he never married, but fathered four children from two prior relationships. Mr. Martinez

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has reportedly held employment as a freelance worker in various construction jobs as well as having worked as a disc jockey for various clubs in Mexico.

According to the presentence report, Mr. Martinez reported a history of using methamphetamine.

Mr. Martinez reported suffering from an ulcer and being prescribed medication to treat his condition. He was also born missing his right lower arm.

Mr. Martinez has a prior misdemeanor conviction for false information to a peace officer. Moreover, he does have prior law enforcement contacts for false identification to a peace officer, grand theft, petty theft, bringing in or harboring aliens, and alien smuggling. Mr. Martinez is currently pending charges for two failure to appears on a unlicensed driver citation, failure to provide evidence of financial responsibility, and missing placement of license plate.

SENTENCING OPTIONS

CUSTODY

Statutory Provisions: Upon the finding of a violation, the court may modify the conditions of supervision; extend the term (if less than the maximum authorized term was previously imposed); or revoke the term of supervised release. 18 U.S.C. § 3583(e)(2) and (3).

If the court revokes supervised release, the maximum term of imprisonment upon revocation is 2 year(s). 18 U.S.C. § 3583(e)(3).

USSG Provisions: The allegation (importation of marijuana) constitutes a Grade A violation. USSG § 7B1.1(a)(1)(A)(ii), p.s.

Upon a finding of a Grade A violation the court shall revoke supervised release. USSG § 7B1.3(a)(1), p.s.

A Grade A violation with a Criminal History Category I (determined at the time of sentencing) establishes an **imprisonment range of 12 to 18 months**. USSG § 7B1.4, p.s.

Since "the original sentence was the result of a downward departure ... an upward departure may be warranted" upon revocation. The court can depart from the available imprisonment range and impose a sentence of up to the statutory maximum of 24 months. USSG § 7B1.4, p.s., comment. (n.4), and 18 U.S.C. § 3583(e)(3).

Finally, if supervised release is revoked and a term of imprisonment is imposed, the court shall order that the term of imprisonment be served consecutively to any sentence of imprisonment the offender may be serving. USSG § 7B1.3(f), p.s.

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REIMPOSITION OF SUPERVISED RELEASE

If supervised release is revoked and the offender is required to serve a term of imprisonment, the court can reimpose supervised release upon release from custody. The length of such a term shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment imposed upon revocation. 18 U.S.C. § 3583(h).

In this case, the court has the authority to reimpose a term of 3 year(s) supervised release, less any term of imprisonment imposed upon revocation. 18 U.S.C. § 3583(b).

RECOMMENDATION/JUSTIFICATION

Mr. Martinez has had eleven other prior apprehensions from October 1999 through October 2006, by U.S. Border Patrol, varying from alien smuggling to importation of controlled substances, and in each of these cases prosecution was declined. Mr. Martinez has taken light of the justice system and continues to press his luck. Moreover, it is evident Mr. Martinez failed to learn his lesson from his custodial sentence in the instant matter. He has exhibited complete negligence and disregard as to the orders imposed by the court. Within a matter of two weeks of his release from the RRC, Mr. Martinez committed the new law violation, demonstrating that his non-compliant behavior will continue regardless of the orders imposed by the Court. Therefore, it is recommended that Mr. Martinez be sentenced to the high end of the range of imprisonment, to best help deter his current behavior. This should demonstrate to Mr. Martinez that his continued non-compliance is unacceptable and will result in consequences.

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Considering the aforementioned, it is respectfully recommended that supervised release be revoked and he be sentenced to 18 months in custody, with no supervision to follow as he is likely to receive a term of supervision under the matter alleged as a violation herein. Finally, it is recommended that any custody sentence imposed in the instant case be served consecutive to any sentence of imprisonment he may be serving pursuant to USSG § 7B1.3(f).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: August 18, 2008

Respectfully submitted:

KENNETH O. YOUNG

CHIEF PROBATION OFFICER

by Amanda Behl

Amanda Behl

United States Probation Officer

(760) 335-3441

Reviewed and approved:

Pascual Linarez

Pascual Linarez

Supervising U.S. Probation Officer

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VIOLATION WORKSHEET

1. **Defendant:** MARTINEZ, Gabriel
2. **Docket No. (Year-Sequence-Defendant No.):** 07-CR-3232-001-LAB

3. **List Each Violation and Determine the Applicable Grade (See USSG § 7B1.1):**

<u>Violation(s)</u>	<u>Grade</u>
<u>Importation of marijuana</u>	<u>A</u>
<u> </u>	<u> </u>
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4. **Most Serious Grade of Violation (See USSG § 7B1.1(b))** [A]
5. **Criminal History Category (See USSG § 7B1.4(a))** [I]
6. **Range of Imprisonment (See USSG § 7B1.4(a))** [12 - 18 months]
7. **Unsatisfied Conditions of Original Sentence:** None.

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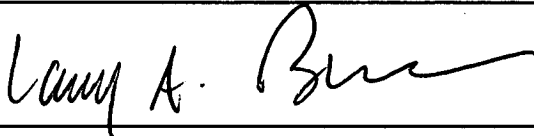
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THE COURT ORDERS:

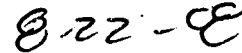
✓ A NO-BAIL BENCH WARRANT BE ISSUED BASED UPON A FINDING OF PROBABLE CAUSE TO BRING THE OFFENDER BEFORE THE COURT TO SHOW CAUSE WHY SUPERVISED RELEASE SHOULD NOT BE REVOKED FOR THE ALLEGED VIOLATIONS.

(Currently detained at the Imperial County Jail under booking #888003).

Other _____



The Honorable Larry A. Burns
U.S. District Judge



Date

alb/alb
DM